

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND CONSERVATION
DIVISION OF
UNDERGROUND STORAGE TANKS**



**GUIDELINES FOR
FINANCIAL ASSURANCE MECHANISMS
FEBRUARY 2010**

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To satisfy Tennessee Underground Storage Tank regulatory requirements, the documents contained in these guidelines, which comprise a financial assurance mechanism or instrument, must be used as formatted and worded in these guidelines.

Definitions of Terms Used in This Document or in the Rules

These terms are used in the financial assurance mechanisms contained in this guidance document or in the UST regulations, rule 1200-01-15-.01 et seq.:

"Annual aggregate" means the total amount of financial responsibility available to cover all obligations that might occur in one year.

"Assets" means property, tangible or intangible, owned by a business enterprise that has monetary value.

"Bodily injury" means those bodily injuries caused by a release of petroleum from an UST system for which Tennessee law allows recovery.

"Bond rating agency" means a financial service entity, such as Moody's and Standard and Poor's, which provide ratings with respect to the overall quality of corporately issued bonds as measured by the safety of the principal and the interest. The ratings are used as indicators of a business' ability to self-assure.

"Chief executive officer" means:

1. In the case of a company or corporation, the highest ranking executive officer within a company or corporation who has responsibility for overall management of its day-to-day affairs under the supervision of a board of commissioners. The term chief executive officer may indicate an officer with dual responsibilities such as chief executive officer and president or chairman of the board and chief executive officer. The chief executive officer makes recommendations to the board on business policy and proposal but can also take specific actions on subsidiary matters. The chief executive officer also appoints most other officers of the corporation with the approval of the board of commissioners.
2. In the case of local government tank owners and operators or guarantors, the individual with the overall authority and responsibility for the collection, disbursement and use of funds by the local government.

"Commissioner" means Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the Commissioner's office, the Deputy Commissioner.

"Damages" in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from an UST system as determined by using methods allowed under Tennessee law.

"Face amount" or "face value" means the total amount the insurer is obligated to pay under an insurance policy.

"Financial reporting year" means the annual period for which a business compiles its performance data for the purpose of the assessment of the business as "a going concern" by its managers, investors, creditors, and government regulators.

"Financial statements" means financial performance data compiled by the subject business that have undergone the review and evaluation of an independent certified public accountant for the purpose of assessing the conformity of the business' accounting practices with generally accepted accounting principles (GAAP). The independent CPA, Certified Public Accountant, issues a statement summarizing his/her assessment or findings.

"Financial strength ratios" mean a financial comparison of the relationship of any two or more performance indicators of a business with the industry standard for the relationship between such performance indicators. The calculation of these ratios and their subsequent comparison to industry norms can be helpful in assessing the ability of a business to provide self-assurance to meet the financial assurance requirements of this rule. These regulations utilize the following three ratios to evaluate a business's ability to self assure:

1. "Total liabilities to net worth" means a ratio that expresses the relationship between capital contributed by creditors and capital contributed by owners. If debt is substantial relative to equity, it means that a relatively small decrease in the value of assets could wipe out the owner's equity and remove protection from creditors who could force the business into bankruptcy.
2. "Net income, depreciation, depletion and amortization to total liabilities" means a ratio that expresses the ability of a business to service its debt, long term and short term, from cash flow from business operations without borrowing money for the repayment of debt.
3. "Current assets to current liabilities" means a ratio that is used to measure the short term solvency of a business. It is the most commonly used ratio and indicates the extent to which the claims of short-term creditors are covered by assets expected to be converted to cash in a period roughly corresponding to the maturity of the claim.

"Legal defense cost" means any expense that an owner or operator, petroleum site owner, or provider of financial assurance incurs in defending against claims or actions brought:

1. By EPA or a state to require corrective action or to recover the costs of corrective action;
2. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
3. By any person to enforce the terms of a financial assurance mechanism.

"Penal sum" means a sum to be paid as a penalty especially under the terms of a bond.

“Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of an underground storage tank through a mechanism or mechanisms allowed by rule 1200-01-15-.08(4), including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the State of Tennessee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, “assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

“Termination” in the context of financial responsibility means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

“Third party” means any person except: the owner or operator of an UST system from which a release of petroleum occurred; the owner of the petroleum site; any person in his or her capacity as an agent, servant or employee of such owner or operator or petroleum site owner; the Division; the Department; or the Environmental Protection Agency.

“Third party claim” means any civil action brought or asserted by a third party against any owner and/or operator for damages resulting in bodily injury or property damages which are caused by a release of petroleum from an UST system.

A. Financial Test of Self-Assurance

The Financial Test of Self-Assurance is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee Rule 1200-01-15-.08(6) Financial Test of Self Assurance can be accessed at <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism **cannot be used in combination** with another mechanism. This mechanism requires that the documents listed below be submitted to the Tennessee Department of Environment and Conservation **annually**. The annual submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Letter from the Chief Executive Officer or the Chief Financial Officer

A Letter from the Chief Executive Officer or the Chief Financial Officer of the business firm of the petroleum underground storage tank owner or operator using the Financial Test of Self-Assurance as their financial assurance mechanism shall be submitted to the Tennessee Department of Environment and Conservation annually (see page 11). To satisfy the requirements of the Underground Storage Tank Regulations governing financial responsibility, the wording of the letter and test as submitted shall be exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced by the relevant information and the brackets deleted.

2. Financial Test of Self-Assurance

Annually, the tank owner or tank operator must complete, sign, have notarized and submit **either** the Financial Test Of Self-Assurance - Alternative I (see page 15) **or** the Financial Test Of Self Assurance - Alternative II (see page 18). The Financial Test of Self Assurance must be attached to the Letter from the Chief Executive or Chief Financial Officer. The Financial Test Of Self-Assurance, whether Alternative I or Alternative II must read as set forth in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

(a) **Alternative I - Financial Test of Self-Assurance** (see page 15)

(b) **Alternative II - Financial Test of Self-Assurance** (see page 18).

3. A Financial Test of Self-Assurance Guarantee Agreement (see page 21).

The tank owner or tank operator must complete, sign, have notarized and submit the Financial Test of Self-Assurance Guarantee Agreement, which must read exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

4. Financial statements must be included with the annual submittal, including the special report prepared by the certified public accountant.

**Letter From The Chief Executive Officer Or The Chief Financial Officer
Of The Business Firm
Of The Petroleum Underground Storage Tank Owner Or Operator
Using The Financial Test Of Self-Assurance**

I am the **[insert: chief executive officer *or* chief financial officer]** of **[insert: name and address of the owner *and/or* operator]**. This letter is in support of the use of the Financial Test of Self-Assurance to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in the amount of at least \$**[insert: the dollar amount]** per occurrence and \$**[insert: the dollar amount]** annual aggregate. This letter is submitted to satisfy the requirements of Rule 1200-01-15-.08(3) and (7)(c) of the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks.

The fiscal year of this firm ends on **[insert: month, day]**. This firm, **[insert: name of tank owner *and/or* tank operator]**, has no parent company holding majority control of its voting stock. This firm, **[insert: name of tank owner *and/or* tank operator]**, has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.

This firm's fiscal year-end financial statements from which we have drawn the asterisked (*) figures are examined by an independent certified public accountant. The firm's fiscal year-end financial statements, which accompany this financial test, also include the opinion of the independent certified public accountant on the year-end financial statements.

This firm **[insert: files a Form 10K with the Securities and Exchange Commission for the latest fiscal year, *and/or* files financial statements annually with the Energy Information Administration]**.

This firm **[insert: does *or* does not]** report annually the firm's complete financial statements to Dun and Bradstreet **[if the company does report, insert: and has been assigned by Dun and Bradstreet a financial strength rating of [insert: 4A *or* 5A] and a composite credit appraisal of 1 (one)]**.

The figures for the following items of **[insert: Alternative I *or* Alternative II]**, marked with an asterisk (*), are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended **[insert: the date]**.

Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this firm through the use of the financial test: **[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]**

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable |
|------------------------|------------------|------------------|-------------------------------|--|
| (1) | | | | |
| (2) | | | | |
| (3) | | | | |

The total amount of financial assurance for underground storage tank systems in the State of Tennessee provided through the use of the financial test is \$***[insert: dollar amount]***.

Petroleum underground storage tank systems in states other than Tennessee are assured by the financial test in the following amount(s): ***[insert: the name of each state and the amount of financial assurance provided that state through the use of the financial test of self-assurance]***:

| Name of State | Amount of UST Financial Assurance Provided by the Use of the Financial Test |
|---------------|--|
| (1) | |
| (2) | |
| (3) | |

The total amount of financial assurance for underground storage tank systems provided for all states other than Tennessee through the use of the financial test is \$***[insert: the dollar amount]***.

[insert: Name of owner or operator] ***[insert one: does or does not]*** use the Financial Test of Self-Assurance in other environmental programs in the State of Tennessee, other states, and/or with federal agencies or programs. The following is a list, by state(s), of all environmental programs for which the tank owner or operator uses the Financial Test of Self-Assurance to complying with the financial responsibility requirements of any of the following programs:

- a. Financial assurance for corrective action for solid waste management units;
- b. Closure and/or post closure of hazardous waste treatment, storage, and/or disposal facilities;

- c. Closure and/or remediation and operation and maintenance of CERCLA sites;
- d. Storage, disposal, post closure care, and corrective action at municipal, industrial, or privately owned solid waste management facilities;
- e. Reclamation of facilities licensed to receive, possess, store, and use radioactive material;
- f. Private sewerage treatment and disposal systems;
- g. Used oil management;
- h. Recycling and reuse of hazardous waste;
- i. Third party legal pollution liability coverage for hazardous waste facilities;
- j. Plugging and abandonment of hazardous waste;
- k. Oil and gas exploration; and/or
- l. Other environmental programs not listed above.

Identified below for each state are any and all facilities for which the Financial Test of Self-Assurance is used as described above:

State: _____

Name of Facility_____

Facility Address_____

Identification Number of the Facility, Assigned by the State Listed Above

| | Environmental Program | Amount of Financial Responsibility |
|-----|-----------------------|---------------------------------------|
| (1) | | |
| (2) | | |
| (3) | | |

The total amount of financial assurance for other environmental programs (in addition to UST) in the State of Tennessee, other states, and federal programs is \$*[insert: the dollar amount]*.

[Complete and insert either: Alternative I (see page 15) or Alternative II (see page 18) of the Financial Test of Self-Assurance into the Letter of the Chief Executive Officer or the Chief Financial Officer.]

Alternative I
For The Petroleum Underground Storage Tank Owner Or Operator
Using The Financial Test Of Self-Assurance

The dollar figures for the items below marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [*insert: the date*].

| | |
|---|----------|
| 1. Amount of annual UST aggregate coverage for the State of Tennessee being assured by this financial test | \$ |
| 2. Amount of total UST aggregate coverage for states other than Tennessee covered by this owner or operator's use of the financial test | \$ |
| 3. Total dollar amount of financial assurance and/or financial responsibility for other environmental programs, other than UST, in the State of Tennessee, other states, and federal programs provided by the owner or operator's use of the financial test | \$ |
| 4. The total amount for financial assurance or financial responsibility provided by this owner or operator's use of the financial test. (The sum of lines 1, 2, and 3 above.) | \$ |
| 5. Total Liabilities (If any of the amount reported on line 4 is included in total liabilities, that amount has been deducted from this line and added to line 6.) | \$ * |
| 6. Tangible net worth | \$ * |
| 7. Net Worth | \$ * |
| 8. Current Assets | \$ * |
| 9. Current Liabilities | \$ * |
| 10. The sum of net income plus depreciation, depletion, and amortization minus \$10 Million | \$ * |
| 11. Total assets in the U.S. (required only if less than 90% of firm's assets are located in the U.S.) | \$ * |
| 12. Is line 6 at least \$10 million plus the dollar amount of all financial assurance covered by a financial test? | Yes / No |
| 13. Is line 6 at least 6 times line 4? | Yes / No |
| 14. Are at least 90% of the firm's assets located in the U.S.? [If not, complete line 15.] | Yes / No |

- | | |
|---|-------------------|
| 15. Is line 11 at least 6 times line 4? | _____ Yes / No |
| <i>[Complete either lines 16 through lines 18 <u>or</u> lines 19 and 20.]</i> | |
| 16. Is line 5 divided by line 7 less than 1.5? | _____ Yes / No |
| 17. Is line 10 divided by line 5 greater than 0.10? | _____ Yes / No |
| 18. Is line 8 divided by line 9 greater than 1.5? | _____ Yes / No |
| <i>[Complete either lines 16 through lines 18 <u>or</u> lines 19 and 20.]</i> | |
| 19. The owner or operator has a Dun and Bradstreet financial strength rating of 4A or 5A. | _____ Yes / No |
| 20. The owner or operator has a Dun and Bradstreet composite credit appraisal of 1. | _____ Yes / No |

I hereby certify that *[insert: name of owner **and/or** operator]* meets or exceeds at least two of the three required financial ratios in lines 16, 17, and 18 of the Financial Test of Self-Assurance – Alternative I or has a Dun and Bradstreet financial strength rating of 4A or 5A and a composite credit appraisal of 1, has tangible net worth of at least ten million dollars (\$10,000,000.00) plus the dollar amount of all financial assurance covered by a financial test, has tangible net worth at least six (6) times the amount of financial assurance covered by the Financial Test, and has either ninety percent (90%) of its assets in the U.S. or has assets in the U.S. amounting to at least six (6) times the amount of financial assurance secured by the Financial Test of Self-Assurance.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(6) and the guidelines required thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness
my hand and official seal, this _____ day of
_____AD, 20_____.

_____ Notary Public

Alternative II
For The Petroleum Underground Storage Tank Owner Or Operator
Using The Financial Test Of Self-Assurance

The dollar figures for the items below marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [*insert: the date*].

| | |
|--|---------------------------|
| 1. Amount of annual UST aggregate coverage for the State of Tennessee being assured by this financial test: | \$ _____ |
| 2. Amount of total UST aggregate coverage for states other than Tennessee covered by this owner or operator's use of the financial test: | \$ _____ |
| 3. Total dollar amount of financial assurance and/or financial responsibility for other environmental programs, other than UST, in the State of Tennessee, other states, and federal programs provided by the owner or operator's use of the financial test: | \$ _____ |
| 4. The total amount for financial assurance or financial responsibility provided by this owner or operator's use of the financial test: (The sum of lines 1, 2, and 3 above.) | \$ _____ |
| 5. Total Liabilities: (If any of the amount reported on line 4 is included in total liabilities, that amount has been deducted from this line and added to line 6.) | \$ * |
| 6. Tangible net worth: | \$ * |
| 7. Total assets in the U.S.: (Required only if less than ninety percent (90%) of the assets are located in the U.S.) | \$ * |
| 8. If less than ninety percent (90%) of the assets are located in the U.S., is line 7 at least six (6) times line 4? | Yes / No / Not Applicable |
| 9. Is line 6 at least \$10 million plus the dollar amount of all financial assurance covered by a financial test? | Yes / No |
| 10. Is line 6 at least 6 times line 4? | Yes / No |

11. Current bond rating of most recent bond issuance:

[Note: Standard and Poor's ratings acceptable to the Commissioner and by Regulation are limited to ratings of AAA, AA, A, or BBB, ratings of BBB- (BBB minus) and less are not acceptable to the Commissioner. Moody's ratings acceptable to the Commissioner and by Regulation are limited to ratings of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner.]

12. Name of bond rating service:

13. Date of maturity of bond:

I hereby certify that ***[insert: name of tank owner and/or tank operator]*** has tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test, has tangible net worth at least six (6) times the amount of financial assurance covered by the Financial Test of Self-Assurance, and has either ninety percent (90%) of its assets in the U.S. or has assets in the U.S. amounting to at least six (6) times the amount of financial assurance secured by the Financial Test of Self-Assurance.

I hereby certify that the current bond rating of the most recent bond issuance, name of rating service, and date of bond maturity is correct and that ***[insert: name of tank owner and/or tank operator]*** has at least one class of equity securities registered under the Securities and Exchange Act of 1934.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(6) and the guidelines required thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

_____ Notary Public

My commission expires _____

Financial Test of Self-Assurance Guarantee Agreement

Guarantee made this *[insert: date]* by *[insert: name of self guaranteeing entity of owner or operator]*, a business corporation organized under the laws of *[if incorporated within the United States insert: the State of [insert: the name of the State]; or, if incorporated outside the United States, [insert: the name of the country in which incorporated, the principal business within the United States, and the name and address of the registered agent in the state of the principal place of business]]*, herein referred to as self-guarantor, to the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, beneficiary, on behalf of ourselves as *[insert: the tank owner and/or the tank operator]*.

Recitals

1. The self-guarantor has full authority and capacity to enter into this self-guarantee under its bylaws, articles of incorporation, and laws of the State of *[insert: guarantor's state or country of incorporation]*, its state of incorporation. Self-guarantor has approval from its Board of Directors to enter into this Self-Assurance Guarantee Agreement.
2. This self-assurance guarantee is being issued to comply with rule 1200-01-15-.08(6)(h) and (i) of the regulations promulgated by the Tennessee Petroleum Underground Storage Tank Board. Rule 1200-01-15-.08 requires the owners or operators of underground storage tanks to demonstrate financial responsibility to carry out corrective action and compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
3. The self-assurance guarantee is issued to demonstrate financial responsibility in the annual aggregate amount of \$*[insert: the dollar amount]* to carry out corrective action in accordance with rule 1200-01-15-.06 and in the annual aggregate amount of \$*[insert: the dollar amount]* to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
4. The self-guarantor meets or exceeds the Financial Test of Self-Assurance criteria of *[insert: Alternative I as specified in rule 1200-01-15-.08(6)(d) and (f) or Alternative II as specified in rule 1200-01-15-.08(6)(d) and (g)]*.
5. The self-guarantor agrees that if, at the end of any fiscal year before the termination of this self-guarantee, it fails to meet the self-assurance guarantee financial test criteria, it shall send, by certified mail, within ninety (90) days of the end of the fiscal year, notice to the Tennessee Department of Environment and Conservation that it intends to provide alternate financial assurance as specified in rule 1200-01-15-.08(17).

Within one-hundred twenty (120) days after the end of the fiscal year, the self-guarantor shall establish such alternate financial assurance.

6. The self-guarantor agrees that if it is determined at any time, by sources internal or external to the corporation, that the corporation can no longer meet the self-assurance guarantee financial test criteria it shall notify the Commissioner in writing within seventy-two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification.
7. The self-guarantor agrees that if the Commissioner has reason to believe that the self-guarantor can no longer pass the Financial Test of Self-Assurance, the self guarantor will comply with the Commissioner's request for financial information to confirm that the self-guarantor continues to meet or exceed the requirements for use of the Financial Test of Self-Assurance.
8. The self-guarantor, as well as its successors and assigns, agrees to remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Petroleum Underground Storage Tank program of the State of Tennessee except wherein such regulatory or statutory amendments may impede the ability of the self-guarantor to continue to meet the requirements necessary for continued use of the Financial Test of Self-Assurance. In which case the self-guarantor shall provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
9. The self-guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items 5, 6, and 8 of this agreement, the self-guarantor will fund a standby trust in the amount required by rule 1200-01-15-.08(3) for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than the date by which the alternate financial assurance is due.
10. The self-guarantor agrees that it shall be liable for all litigation costs incurred by the beneficiary, the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation, in any successful effort to enforce the agreement against the self-guarantor.
11. The self-guarantor agrees to remain bound under this self-guarantee for as long as it must comply with the applicable financial assurance requirements of rule 1200-01-15-.08, except that the self-guarantor may replace this agreement and the Financial Test of Self-Assurance by substituting an approved alternative financial assurance instrument. In which case, the self-guarantor will remain bound by this agreement until

the substitute financial instrument is approved by the Tennessee Department of Environment and Conservation.

12. The self-guarantor expressly waives notice of acceptance of this self-guarantee by the Tennessee Department of Environment and Conservation. The self-guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the Petroleum Underground Storage Tank program in the State of Tennessee.
13. The self-guarantor agrees that it will notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and that it will, within thirty (30) days of its determination or the Commissioner's determination that it no longer meets the requirements of the Financial Test of Self-Assurance, fund an irrevocable standby trust to assure the performance of corrective action and compensation of third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in the amount specified by rule 1200-01-15-.08(3).

I hereby certify that this self-guarantee is true and correct to the best of my knowledge.

Effective date:_____

[Name of self-guarantor]

[Authorized signature for self-guarantor]

[Name of person signing]

[Title of person signing]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness
my hand and official seal, this _____ day of
_____AD, 20_____.

_____ Notary Public

My commission expires_____

B. Corporate Parent Financial Test Guarantee

The Corporate Parent Financial Test Guarantee is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(7) Corporate Financial Test Guarantee can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism **cannot be used in combination** with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC **annually**. The annual submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Letter from the Chief Executive Officer or the Chief Financial Officer

A Letter from the Chief Executive Officer or the Chief Financial Officer of the corporate parent guarantor of the petroleum underground storage tank owner or operator using the Corporate Parent Financial Test Guarantee as their financial assurance mechanism shall be submitted to the Tennessee Department of Environment and Conservation annually (see page 27). To satisfy the requirements of the Underground Storage Tank Regulations governing financial responsibility, the wording of the letter and test as submitted shall be exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced by the relevant information and the brackets deleted.

2. Corporate Parent Financial Test

The tank owner or tank operator must complete, sign, have notarized and submit **either** the Corporate Parent Financial Test - Alternative I (see page 31) **or** the Corporate Parent Financial Test - Alternative II (see page 34). The Corporate Parent Financial Test must be attached to the Letter from the Chief Executive or Chief Financial Officer. The Corporate Parent Financial Test, whether Alternative I or Alternative II, must read as set forth in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

(a) Alternative I - Corporate Parent Financial Test (see page 31)

(b) **Alternative II - Corporate Parent Financial Test** (see page 34).

3. A Corporate Parent Financial Test Guarantee Agreement (see page 37).

Annually, the tank owner or tank operator must complete and submit the notarized Corporate Parent Financial Test Guarantee Agreement, which must read exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

4. Financial statements must be included with the annual submittal, including the special report prepared by a certified public accountant.

**Letter From The Chief Executive Officer Or The Chief Financial Officer
Of The Business Firm Of The Corporate Parent or Guarantor
Of The Petroleum Underground Storage Tank Owner Or Operator
Using The Corporate Parent Financial Test Guarantee**

I am the *[insert: chief executive officer **or** chief financial officer]* of *[insert: name and address of corporate parent guarantor]*, a direct or higher-tier parent corporation of *[insert: name of tank owner **and/or** tank operator]*. This letter is in support of the use of the Corporate Parent Financial Test in conjunction with the Corporate Parent Guarantee Agreement to demonstrate financial responsibility for *[insert: name and address of business on whose behalf this parent corporate guarantee is being made]* for *[insert: taking corrective action **and/or** compensating third parties for bodily injury and property damage]* caused by accidental releases arising from the operation of petroleum underground storage tank systems in the amount of at least \$*[insert: the dollar amount]* per occurrence and \$*[insert: the dollar amount]* annual aggregate. This letter is submitted to satisfy the requirements of Rule 1200-01-15-.08(3) and (7) of the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks.

The fiscal year of this firm, *[insert: name of corporate parent guarantor]*, ends on *[insert: month, day]*. This firm holds majority control of the voting stock of *[insert: name of business of tank owner **and/or** tank operator]*, on whose behalf this parent corporate guarantee is being made. This firm, *[insert: name of corporate parent guarantor]*, has no parent company or other firm holding majority control of its voting stock. This firm has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.

This firm's fiscal year-end financial statements from which we have drawn the asterisked (*) figures are examined by an independent certified public accountant. The firm's fiscal year-end financial statements, which accompany this financial test, also include the opinion of the independent certified public accountant on the year-end financial statements.

[Insert either: This firm *[insert: files a Form 10K with the Securities and Exchange Commission for the latest fiscal year, **and/or** files financial statements annually with the Energy Information Administration].* ***or:*** This firm *[insert one: does **or** does not]* report annually the firm's tangible net worth to Dun and Bradstreet *[if the company does report, insert: and has been assigned by Dun and Bradstreet a financial strength rating of [insert one: 4A or 5A] and a composite credit appraisal of [insert one: 1. or 2].]*

The figures for the following items of the Corporate Parent Financial Test - *[insert: Alternative I **or** Alternative II]* marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended *[insert: the date]*.

Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this firm through the use of this Corporate Parent Financial Test Guarantee:

[Insert or list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| | Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable |
|-----|------------------------|---------------------|------------------|-------------------------------|--|
| (1) | | | | | |
| (2) | | | | | |
| (3) | | | | | |

The total amount of financial assurance for underground storage tank systems in the State of Tennessee provided through the use of the Corporate Parent Financial Test Guarantee is \$***[insert: the dollar amount]***.

Petroleum underground storage tank systems in states other than Tennessee are assured by the Corporate Financial Test Guarantee in the following amount(s) ***[insert or list: each state and the amount of financial assurance provided that state through the use of the financial test]***:

| Name of State | Amount of UST Financial Assurance Provided by the Use of the Financial Test |
|---------------|--|
| (1) | |
| (2) | |
| (3) | |

The total amount of financial assurance for underground storage tank systems provided for all states other than Tennessee through the use of the financial test is \$***[insert: the dollar amount]***.

[insert: Name of corporate parent guarantor] ***[insert one: does or does not]*** use the Corporate Parent Financial Test Guarantee in other environmental programs in the State of Tennessee, other states, and/or with federal agencies or programs. The following is a list, by state(s), of all environmental programs for which the corporate parent guarantor uses the Corporate Parent Financial Test Guarantee to comply with the financial responsibility requirement of any of the following programs:

- a. Financial assurance for corrective action for solid waste management units;
- b. Closure and/or post closure of hazardous waste treatment, storage, and/or disposal facilities;
- c. Closure and/or remediation and operation and maintenance of CERCLA sites;
- d. Storage, disposal, post closure care, and corrective action at municipal, industrial, or privately owned solid waste management facilities;
- e. Reclamation of facilities licensed to receive, possess, store, and use radioactive material;
- f. Private sewerage treatment and disposal systems;
- g. Used oil management;
- h. Recycling and reuse of hazardous waste;
- i. Third party legal pollution liability coverage for hazardous waste facilities;
- j. Plugging and abandonment of hazardous waste;
- k. Oil and gas exploration; and/or
- l. Other environmental programs not listed above.

Identified below for each state are any and all facilities for which the Corporate Parent Financial Test Guarantee is used by the corporate parent guarantor as described above:

State: _____

Name of Facility _____

Facility Address _____

Identification Number of the Facility, Assigned by the State Listed Above _____

| | Environmental Program | Amount of Financial Responsibility |
|-----|-----------------------|---------------------------------------|
| (1) | | |
| (2) | | |

(3)

The total amount of financial assurance for other environmental programs (in addition to UST) in the State of Tennessee, other States, and Federal Programs is \$*[insert: the dollar amount]*.

[Insert either: Alternative I (on page 31) or: Alternative II (on page 34) of the Corporate Parent Financial Test into the Letter of the Chief Executive Officer or the Chief Financial Officer.]

Alternative I
For The Corporate Parent Financial Test Guarantee
Used as the Financial Assurance Mechanism for
The Petroleum Underground Storage Tank Owner Or Operator

The dollar figures for the items below marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [*insert: the date*].

| | |
|--|----------|
| 1. Amount of annual UST aggregate coverage for the State of Tennessee being assured by this financial test: | \$ |
| 2. Amount of total UST aggregate coverage for states other than Tennessee covered by the corporate parent guarantor's use of the financial test: | \$ |
| 3. Total dollar amount of financial assurance and/or financial responsibility for other environmental programs, other than UST, in the State of Tennessee, other states, and/or federal programs provided by the corporate parent guarantor's use of the financial test: | \$ |
| 4. The total amount for financial assurance or financial responsibility provided by the corporate parent guarantor's use of the financial test: (The sum of lines 1, 2, and 3 above.) | \$ |
| 5. Total Liabilities: (If any of the amount reported on line 4 is included in total liabilities, that amount has been deducted from this line and added to line 6.) | \$ * |
| 6. Tangible net worth: | \$ * |
| 7. Net Worth: | \$ * |
| 8. Current Assets: | \$ * |
| 9. Current Liabilities: | \$ * |
| 10. The sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000): | \$ * |
| 11. Total assets in the U.S. (required only if less than ninety percent (90%) of firm's assets are located in the U.S.): | \$ * |
| 12. Is line 6 at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test? | Yes / No |
| 13. Is line 6 at least 6 times line 4? | Yes / No |

| | | |
|-----|--|----------|
| 14. | Are at least ninety percent (90%) of the firm's assets located in the U.S.? (If not, complete line 17.) | Yes / No |
| 15. | Is line 11 at least 6 times line 4? (Complete lines 16 through lines 18 or lines 19 and 20.) | Yes / No |
| 16. | Is line 5 divided by line 7 less than 1.5? | Yes / No |
| 17. | Is line 10 divided by line 5 greater than 0.10? | Yes / No |
| 18. | Is line 8 divided by line 9 greater than 1.5? (Complete lines 16 through lines 18 or lines 19 and 20.) | Yes / No |
| 19. | The owner or operator has a Dun and Bradstreet financial strength rating of 4A or 5A. | Yes / No |
| 20. | The owner or operator has a Dun and Bradstreet composite credit appraisal of 1. | Yes / No |

I hereby certify that *[insert: name of corporate parent guarantor]* meets or exceeds at least two of the three required financial ratios in lines 16, 17, and 18 of the Corporate Parent Financial Test - Alternative I or has a Dun and Bradstreet financial strength rating of *[insert one: 4A or 5A]* and a composite credit appraisal of 1, has tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test, has tangible net worth at least (6) six times the amount of financial assurance covered by the Financial Test - Alternative I, and has either ninety percent (90%) of its assets in the U.S. or has assets in the U.S. amounting to at least six (6) times the amount of financial assurance secured by the Corporate Parent Financial Test – Alternative I.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(6) and the guidance established thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness

my hand and official seal, this _____ day of

_____ AD, 20_____.

_____ Notary Public

My commission expires _____

Alternative II
For The Corporate Parent Financial Test
Used as the Financial Assurance Mechanism for
The Petroleum Underground Storage Tank Owner Or Operator

The dollar figures for the items below marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [*insert: the date*].

- | | | |
|--|---------------------------|--|
| 1. Amount of annual UST aggregate coverage for the State of Tennessee being assured by this financial test: | \$ | |
| 2. Amount of total UST aggregate coverage for states other than Tennessee covered by the corporate parent guarantor's use of the financial test: | \$ | |
| 3. Total dollar amount of financial assurance and/or financial responsibility for other environmental programs, other than UST, in the State of Tennessee, other states, and/or federal programs provided by the corporate parent guarantor's use of the financial test: | \$ | |
| 4. The total amount for financial assurance or financial responsibility provided by the corporate parent guarantor's use of the financial test: (The sum of lines 1, 2, and 3 above.) | \$ | |
| 5. Total Liabilities: (If any of the amount reported on line 4 is included in total liabilities, that amount has been deducted from this line and added to line 6.) | \$ * | |
| 6. Tangible net worth: | \$ * | |
| 7. Total assets in the U.S.: (Required only if less than ninety percent (90%) of the assets are located in the U.S.) | \$ * | |
| 8. If less than ninety percent (90%) of the assets are located in the U.S., is line 7 at least six (6) times line 4? | Yes / No / Not Applicable | |
| 9. Is line 6 at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test? | Yes / No | |
| 10. Is line 6 at least six (6) times line 4? | Yes / No | |

11. Current bond rating of most recent bond issuance:

[Note: Standard and Poor's ratings acceptable to the Commissioner and by Regulation are limited to ratings of AAA, AA, A, or BBB, ratings of BBB- (BBB minus) and less are not acceptable to the Commissioner. Moody's ratings acceptable to the Commissioner and by Regulation are limited to ratings of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner.]

12. Name of bond rating service:

13. Date of maturity of bond:

I hereby certify that *[insert: name of corporate parent guarantor]* has tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test, has tangible net worth at least six (6) times the amount of financial assurance covered by the Financial Test, and has either ninety percent (90%) of its assets in the U.S. or has assets in the U.S. amounting to at least six (6) times the amount of financial assurance secured by the Financial Test of Self-Assurance.

I hereby certify that the current bond rating of the most recent bond issuance, name of rating service, and date of bond maturity is correct and that *[insert: name of corporate parent guarantor]* has at least one class of equity securities registered under the Securities and Exchange Act of 1934.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(7) and the guidelines authorized thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

Signature:

Name:

Title:

Date:

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

_____ Notary Public

My commission expires _____

Corporate Parent Financial Test Guarantee Agreement

Guarantee made this *[insert: the date]* by *[insert: the name of the Corporate Parent Guarantor]*, (the guarantor), a business corporation organized under the laws of *[if incorporated within the United States, insert: the State of [insert: the name of the State]; if incorporated outside the United States, insert: the name of the country in which incorporated, the principal business within the United States, and the name and address of the registered agent in the State of the principal place of business]*, herein referred to as Corporate Parent Guarantor, to the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, beneficiary, on behalf of ourselves as Guarantors of the financial responsibility obligations of *[insert: the name and address of tank owner and/or tank operator]* pursuant to Tennessee rule 1200-01-15-.08 (7).

Recitals

1. The guarantor has full authority and capacity to enter into this corporate parent guarantee under its bylaws, articles of incorporation, and laws of the State of *[insert: guarantor's state or country of incorporation]*, its state of incorporation. Guarantor has approval from its Board of Directors to enter this corporate parent guarantee.
2. This corporate parent guarantee is being issued to comply with regulations promulgated by the Tennessee Petroleum Underground Storage Tank Board, at rule 1200-01-15-.08(3) and (7). The specified rule requires the owner or operator of underground storage tanks to demonstrate financial responsibility to take corrective action and compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
3. This corporate parent guarantee is issued to demonstrate financial responsibility in the annual aggregate amount of \$*[insert: the dollar amount]* to carry out corrective action as instructed by the Commissioner and in the annual aggregate amount of \$*[insert: the dollar amount]* to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
4. *[insert: Name of corporate parent guarantor]*, meets or exceeds the Corporate Parent Financial Test criteria of *[insert: Alternative I or Alternative II]* as set forth in rule 1200-01-15-.08(7).
5. The corporate parent guarantor agrees that if, at the end of any fiscal year before the termination of this corporate parent guarantee, it fails to meet the applicable financial test criteria, it shall send, by certified mail, within

ninety (90) days of the end of the fiscal year, notice to the Tennessee Department of Environment and Conservation that it intends to provide alternate financial assurance as specified in rule 1200-01-15-.08(17). Within one hundred twenty (120) days after the end of the fiscal year, the guarantor shall establish such alternate financial assurance.

6. The guarantor agrees that if it is determined at any time, by sources internal or external to the corporation, that the corporation can no longer meet the applicable financial test criteria, it shall notify the Commissioner in writing within seventy-two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification.
7. The guarantor agrees that if the Commissioner has reason to believe that the corporate parent guarantor can no longer pass the Corporate Parent Financial Test, the corporate parent guarantor will comply with the Commissioner's request for financial information to confirm that the corporate parent guarantor continues to meet or exceed the requirements for use of the financial test.
8. The corporate parent guarantor, as well as its successors and assigns, agrees to remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Underground Storage Tank Program of the State of Tennessee except wherein such regulatory or statutory amendments may impede the ability of the corporate parent guarantor to continue to meet the requirements necessary for continued use of the Corporate Parent Financial Test. In which case, the corporate parent guarantor must provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
9. The corporate parent guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items 5, 6, and 8 of this agreement, the corporate parent guarantor will fund a standby trust in the amount required by Rule 1200-01-15-.08(3) for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than the date by which the alternate financial assurance is due.
10. The corporate parent guarantor agrees that it shall be liable for all litigation costs incurred by the beneficiary, the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation, in any successful effort to enforce the agreement against the corporate parent guarantor.

11. The corporate parent guarantor agrees to remain bound under this corporate parent guarantee for as long as the tank owner and/or operator is required to comply with the applicable financial assurance requirements of rule 1200-01-15-.08(7), except that the corporate parent guarantor may replace this agreement and the Corporate Parent Financial Test Guarantee by substituting an approved alternative financial assurance instrument. In which case, the corporate parent guarantor shall remain bound by this agreement until the substitute financial instrument is approved by the Tennessee Department of Environment and Conservation.
12. The corporate parent guarantor expressly waives notice of acceptance of this corporate parent guarantor by the Tennessee Department of Environment and Conservation. The corporate parent guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the UST program in the State of Tennessee.
13. The corporate parent guarantor agrees that it will notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code.

I hereby certify that this guarantee is true and correct to the best of my knowledge.

Effective date:_____

Name of Corporate Parent Guarantor:

Authorized Signature for Corporate Parent Guarantor:

Name of Person Signing:

Title of Person Signing:

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

Notary Public

My commission expires_____

C. Liability Insurance

Liability Insurance is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(8) Liability Insurance can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism may be used in combination with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

A duplicate original of the Insurance Policy along with 3 below and with either 1 or 2 below:

- 1. UST Certificate of Insurance (see page 42); or**
- 2. UST Insurance Endorsement (see page 45)**

Wording For The UST Certificate of Insurance or for the UST Insurance Endorsement shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

AND

- 3. Standby Trust Fund (see Section J – page 96)**

UST Certificate of Insurance

Policy Number:

Endorsement: *[if applicable]*

Period of Coverage: **[insert: current policy period]**

Name of Insurer:

Address of Insurer:

Name of Insured:

Address of Insured:

Certification:

1. **[insert: Name of insurer]**, the insurer, as identified above, hereby certifies that it has issued liability insurance covering the underground storage systems identified herein. For **[insert: “taking corrective action” and/or “compensating third parties for bodily injury and/or property damage”]** caused by accidental releases arising from the operation of petroleum underground storage tank systems, in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy. Exclusive of legal defense costs, which are subject to a separate limit under the policy, the limits of liability per occurrence for each type of coverage is shown in the list at the end of this part of the of the certification,. Exclusive of legal defense costs, which are subject to a separate limit under the policy, the limit of annual aggregate liability coverage for all corrective action costs for the tank systems included in the list at the end of this part of the certification is \$**[insert: dollar amount]** and the limit of annual aggregate liability coverage for all third party claims for the tank systems included in the list at the end of this part of the certification is \$**[insert: dollar amount]**. This coverage is provided under **[insert: policy number]**. The effective date of said policy is **[insert: effective date]**.

Petroleum underground storage tank systems at the following facilities in Tennessee are covered by the liability insurance policy: **[insert and list for each facility: the number of**

tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
|------------------------|---------------------|------------------|-------------------------------|--|--|---|

(1)

(2)

(3)

2. The **[insert: name of insurer]**, except for non-payment of premium or misrepresentation by the insured, further certifies the following with respect to the insurance described in Paragraph 1. above:

- a. Bankruptcy or insolvency shall not relieve the **[insert: name of insurer]** of its obligation under the policy to which this certificate applies.
- b. The **[insert: name of insurer]** is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the **[insert: name of insurer]**. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in rule 1200-01-15-.08(8).
- c. Upon request of the Commissioner, the **[insert: name of insurer]** agrees to furnish to the Commissioner a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the **[insert: name of insurer]**, shall be effective only upon written notice and only after the expiration of one hundred eighty (180) days after a copy of such written notice is received by the insured. Such cancellation shall be further conditional upon the replacement of the policy with another allowable financial instrument by the insured and conditional upon the terms specified in rule 1200-01-15-.08(17).

[Insert the following item, Item e., for claims-made policies:]

- e. The insurance covers claims otherwise covered by the policy that are reported to the **[insert: name of insurer]** within six (6) months of the effective date of the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this UST Certificate of Insurance is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(8) and the guidelines established thereby on the date shown below. I further certify that the **[insert: name of insurer]** is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Tennessee.

Signature of Authorized Representative of Insurer

Name of Person Signing **[typed]**

Title

Authorized Representative of **[insert: Name of insurer]**

Address of Authorized Representative

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

Notary Public

My commission expires _____

UST Insurance Endorsement

Policy Number:

Period of Coverage: *[current policy period]*

Name of Insurer:

Address of Insurer:

Name of Insured:

Address of Insured:

Endorsement:

- (1) This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the underground storage tank systems identified herein for ***[insert: “taking corrective action” and/or “compensating third parties for bodily injury and/or property damage”]*** caused by accidental releases arising from the operation of petroleum underground storage tank systems, in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy. Exclusive of legal defense costs, which are subject to a separate limit under the policy, the limits of liability per occurrence for each type of coverage is shown in the list at the end of this part of the of the endorsement. Exclusive of legal defense costs, which are subject to a separate limit under the policy, the limit of annual aggregate liability coverage for all corrective action costs for the tank systems included in the list at the end of this part of the certification is \$***[insert: dollar amount]*** and the limit of annual aggregate liability coverage for all third party claims for the tank systems included in the list at the end of this part of the certification is \$***[insert: dollar amount]***. This coverage is provided under ***[insert: policy number]***. The effective date of said policy is ***[insert: effective date]***.

Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this firm through the use of the financial test: ***[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]***

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
|------------------------|---------------------|------------------|-------------------------------|--|--|---|

(1)

(2)

(3)

(2) The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provision inconsistent with rule 1200-01-15-.08(8) are hereby amended to conform with rule 1200-01-15-.08(8):

- a. Bankruptcy or insolvency of the insured shall not relieve the ***[insert: name of insurer]*** of its obligation under the policy to which this endorsement is attached.
- b. The ***[insert: name of insurer]*** is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ***[insert: name of insurer]***. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Tennessee Underground Storage Tanks regulations at rule 1200-01-15-.08(4).
- c. Whenever requested by the Commissioner, the ***[insert: name of insurer]*** agrees to furnish to the Commissioner a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ***[insert: name of insurer]*** will be effective only upon written notice and only after the expiration of one hundred eighty (180) days after a copy of such written notice is received by the insured and by the Commissioner. Such cancellation shall be further conditional upon the replacement of the policy with another allowable financial instrument by the insured and conditional upon the terms specified in paragraph (17) of rule 1200-01-15-.08.

[Insert the following item, Item e., for claims-made policies:]

- e. The insurance covers claims otherwise covered by the policy that are reported to the ***[insert: name of insurer]*** within six (6) months of the

effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(8) on the date shown below and that the **[insert: name of insurer]** is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the State of Tennessee.

Signature of Authorized Representative of Insurer

Name of Person Signing **[typed]**

Title

Authorized Representative of **[insert: Name of insurer]**

Address of Authorized Representative

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

Notary Public

My commission expires _____

D. Surety Bond or Performance Bond

Surety Bond or Performance Bond is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(9) Surety Bond or Performance Bond can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism may be used in combination with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

The following shall be submitted to the Department:

1. Petroleum Underground Storage Tank Performance Bond

Wording For The UST Surety Bond or the UST Performance Bond shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

2. Standby Trust Fund (see Section J – page 96)

Petroleum Underground Storage Tank Performance Bond

Date bond executed:

Period of coverage:

Principal:
[insert: legal name and business address of tank owner and/or operator]

Type of Organization:
[insert type, such as: individual, joint venture, partnership, or corporation]

Surety(ies):
Name(s):
Business Address(es):

Scope of Coverage:
Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this bond: [insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| | Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|-----|------------------------|---------------------|------------------|-------------------------------|--|--|---|
| (1) | | | | | | | |
| (2) | | | | | | | |
| (3) | | | | | | | |

Penal sum of the bond: _____

Per occurrence: \$ _____

Annual Aggregate: \$ _____

Surety's bond number: _____

Know all persons by these presents, that we, the principal and surety(ies), hereto are firmly bound to the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the surety(ies) are corporation acting as co-sureties, we the sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sums only as is set forth opposite the name of such surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said principal is required under rule 1200-01-15-.08, as amended to provide financial assurance for *[insert: taking corrective action in response to petroleum contamination in accordance with rule 1200-01-15-.06 and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage systems]; [if coverage is different for different tank systems or locations, indicate the type of coverage applicable to each tank system or location]*.

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully take corrective action, in accordance with Rule 1200-01-15-.06 and/or compensate injured third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems identified herein, or if the Principal shall provide alternate financial assurance, as specified in rule 1200-01-15-.08(17) within on hundred twenty (120) days after the date the notice of cancellation is received by the principal from the surety(ies), then this obligation shall be null and void: otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

1. Any obligation of *[insert: name of tank owner and/or operator]* under a worker's compensation, disability benefits, or unemployment compensation law or other similar law:
2. Bodily injury to an employee of *[insert: name of tank owner and/or operator]* arising from, and in the course of, employment by *[insert: name of tank owner and/or operator]*;

3. Bodily injury or property arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*insert: name of tank owner and/or operator*] that is not the direct result of a release from a petroleum underground storage tank system;
5. Bodily injury or property damage for which [*insert: name of tank owner and/or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 1200-01-15-.08.

The surety shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described herein.

Upon notification by the Commissioner that the principal has failed to take corrective action, in accordance with 1200-01-15-.06 and/or compensate injured third parties as guaranteed by this bond, the surety(ies) shall either perform corrective action in accordance with rule 1200-01-15-.06 and/or third-party liability compensation or forfeit the annual aggregate amount for compensating injured third parties and/or taking corrective up to but not exceeding the penal sum of this bond as determined and directed by the Commissioner.

The surety may cancel the bond by sending notice of cancellation by certified mail to the principal and to the Commissioner, provided, however that cancellation shall not occur during the one hundred eighty (180) days beginning on the date of receipt of the notice of cancellation by the principal, as evidenced by the return receipt. Cancellation shall not occur until the Commissioner has been duly notified as evidenced by a return receipt for certified mail.

Upon notification by the Commissioner that the principal has failed to provide alternate financial assurance within one hundred twenty (120) days after the date of the receipt of the notice of cancellation by the principal from the surety(ies), the surety(ies) shall at the direction of the Commissioner, by no later than the one hundred seventy ninth (179th) day following the date of the receipt of the notice of cancellation, pay the amount of the penal sum of the bond into a standby trust fund. If the bond is not renewed or replaced by an alternative instrument within one (1) year of the funding of the trust, the funds of the standby trust will be forfeited to the Department due to the failure of the insured to maintain financial assurance.

The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The principal may terminate this bond by sending written notice to the surety(ies), provided, however that no such notice shall become effective until the surety(ies) receive(s) written authorization for termination of this bond by the Commissioner

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The person(s) whose signature(s) appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(9) and the guidelines established thereby on the date shown below.

Principal:

Signature:

Name(s):

Title(s):

Corporate seal:

Corporate Surety(ies):

Name:

Address:

State of Incorporation:

Liability Limit:

\$ _____

Signature(s):

Name(s)

Title(s)

Corporate Seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond Premium:

\$ _____

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

_____ Notary Public

My commission expires _____

E. Irrevocable Standby Letter of Credit

An Irrevocable Standby Letter of Credit is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(10) Irrevocable Standby Trust Fund can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism may be used in combination with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Petroleum Underground Storage Tank Irrevocable Standby Letter of Credit (see page 55)

Wording for the Petroleum Underground Storage Tank Irrevocable Letter of Credit shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

2. Letter from the tank owner and/or operator to the Commissioner

A letter from the tank owner and/or operator to the Commissioner of the Department of Environment and Conservation shall accompany the Petroleum Underground Storage Tank Irrevocable Standby Letter of Credit at the time the Letter of Credit is submitted to the Commissioner. This letter shall reference the Letter of Credit by number, issuing institution, and date. For each underground storage tank facility relying upon the Letter of Credit for financial responsibility, the letter to the Commissioner shall provide the facility identification number and the address of the location of each facility. The facility identification number shall be the number assigned to the facility by the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation. The letter shall also state the amount of financial responsibility to taking corrective action and for third party compensation provided by the Letter of Credit.

3. Standby Trust Fund (see Section J – see page 96)

**Petroleum Underground Storage Tank
Irrevocable Standby Letter Of Credit**

[Insert: Name and address of issuing institution]

**[Insert: Name and address of the
Commissioner of the Tennessee Department
of Environment and Conservation]**

Dear Commissioner **[insert: the name of the Commissioner of the Tennessee Department of Environment and Conservation]**:

We hereby establish our Irrevocable Standby Letter of Credit, No. **[insert: the number of the Letter of Credit]**, in your favor, at the request and for the account of **[insert: name of tank owner and/or operator]** of **[insert: address of tank owner and/or operator]** up to the aggregate amount of **[insert: dollar amount in words]** U.S. dollars (\$ **[insert: dollar amount in numbers]**), available upon presentation of:

- (1) Your sight draft, bearing reference to this Letter of Credit, No. **[insert: the number of the Letter of Credit]**, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued pursuant to the Tennessee Petroleum Underground Storage Tank Act of 1988 (Tennessee Code Annotated 68-215-101 *et seq.*), as amended".

This Letter of Credit may be drawn on in the event the **[insert: tank owner and/or operator]** fails to **[insert: take corrective action in response to petroleum contamination in accordance with rule 1200-01-15-.06 and/or compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems]**.

This Letter of Credit may be drawn on to cover **[insert: taking corrective action in response to petroleum contamination in accordance with rule 1200-01-15-.06 and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tank systems]** identified below. This Letter of Credit may be drawn on in the per occurrence amount of **[insert: dollar amount in words]** dollars (\$**[insert: dollar amount in numbers]**) and in the annual aggregate amount of **[insert: dollar amount in words]** dollars (\$**[insert: dollar amount in numbers]**).

[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
| (1) | | | | | | |
| (2) | | | | | | |
| (3) | | | | | | |

This letter of credit may be drawn on by the Commissioner in the event of the occurrence of the following events:

- (a) The Commissioner deems the facility abandoned;
- (b) Closure of the facility is ordered by the Commissioner, the Board, or a court of competent jurisdiction;
- (c) The tank owner and/or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or
- (d) The tank owner and/or operator fails to provide alternate financial assurance within one hundred twenty (120) days following notification to the tank owner and/or operator that the letter of credit will not be renewed or by no later than sixty (60) days from the stated date of the cancellation.

The letter of credit may not be drawn on to cover any of the following:

- (1) Any obligation of ***[insert: name of tank owner and/or operator]*** under a workers' compensation, disability benefits, or unemployment by ***[insert: name of tank owner and/or operator]***;
- (2) Bodily injury to an employee of ***[insert: name of tank owner and/or operator]*** arising from, and in the course of, employment by ***[insert: name of tank owner and/or operator]***;
- (3) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (4) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by **[insert: name of tank owner and/or operator]** that is not the direct result of a release from a petroleum underground storage tank system;
- (5) Bodily injury or property damage for which **[insert: name of tank owner and/or operator]** is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of rule 1200-01-15-.08.

This Letter of Credit is effective as of **[insert: effective date]** and shall expire on **[insert: date of expiration]**, but such expiration date shall be automatically extended for a period of **[insert: a length of time at least equivalent to the length of the original term]** on **[insert: date of expiration]** and on each successive expiration date, unless, at least one hundred eighty (180) days before the current expiration date, we notify both you and **[insert: name of tank owner and/or operator]** by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that you and **[insert: name of tank owner and/or operator]** are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred eighty (180) days after the date of receipt **[insert: name of tank owner and/or operator]**, as shown on the signed return receipt of mail. However, the Letter of Credit shall not expire without notification of the Commissioner of the Tennessee Department of Environment and Conservation, as evidence by proof of receipt of certified mail.

Whenever this Letter of Credit is drawn on, and under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft in accordance with the instructions of the Commissioner of the Tennessee Department of Environment and Conservation or his/her designee.

We certify that the wording of this letter of credit is identical to the wording specified in rule 1200-01-15-.08(10) and the guidance issued thereunder as such regulations were constituted on the date shown below.

[Insert: signature(s) and title(s) of official(s) of issuing institution]

Signature: _____

Title: _____

[Insert: date]

Date: _____

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

Notary Public

My commission expires_____

This credit is subject to [***insert either:** the most recent edition of the Uniform Customs and Practices for Documentary Credits, published and copyrighted by the International Chamber of Commerce **or** the Uniform Commercial Code*].

G. Personal Bond Supported By Certificate Of Deposit

A Personal Bond Supported By Certificate Of Deposit is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(11) Trust Agreement can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism may be used in combination with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. The Original of the Statement of Personal Bond Supported by a Certificate of Deposit (see page 60)

Wording for the Personal Bond shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

2. The Original Certificate of Deposit

OR

The Original Safekeeping Receipt of the Deposit

Statement of Personal Bond Supported By Certificate Of Deposit

Date bond executed:

[insert: date]

Effective date:

[insert: date]

Principal:

[insert: legal name and address of tank owner or operator]

Type of organization:

[insert: individual, joint venture, partnership or corporation]

Owner identification number assigned to this tank owner by the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation :

[insert: UST owner ID # number; or Not Applicable - Tank Operator, if this financial assurance mechanism is for a tank operator]

[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
|------------------------|---------------------|------------------|-------------------------------|--|--|---|

(1)

(2)

(3)

Name of Financial Institution Issuing the Certificate(s) of Deposit:

Address of Issuing Financial Institution:

Required bond amount guaranteed by this certificate(s) of deposit:
[insert: amount in words] dollars (\$ [insert: numerical dollar amount])

The total penal sum of bond is the initial amount of deposit plus accrued interest.

Serial Number(s) of Certificate(s) of Deposit:

KNOW ALL PERSONS BY THESE PRESENTS, That we, the Principal, hereto are firmly bound to the Tennessee Department of Environment and Conservation, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally for the payment of the full amount of the penal sum.

WHEREAS said principal is required under the Tennessee Petroleum Underground Storage Act of 1988, Tennessee Code Annotated 68-215-101 *et seq.* as amended, to provide financial assurance to the Tennessee Department of Environment, hereinafter the Department, for taking corrective action and for compensating third parties.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, in response to the direction of the Commissioner of the Department, shall take corrective action in compliance with rule 1200-01-15-.06 and/or compensate third-parties for bodily injury and/or property damage caused by an accidental release arising from the operation of a petroleum underground storage tank system, as such rules may be amended, and pursuant to all other applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended, for the duration of the requirement, the liability of the Principal assumed in the provisioning of this bond shall be discharged, and the certificate(s) of deposit supporting the same and any interest accruing from the certificate of deposit shall be returned to the Principal.

Upon notification by the Commissioner of the Department that the Principal has failed to take corrective action in compliance with rule 1200-01-15-.06 and/or compensate third-parties for bodily injury and/or property damage caused by an accidental release arising from the operation of a petroleum underground storage tank system in response, the Principal shall, as directed by the Commissioner of the Department take the required corrective action and/or compensate third-parties for bodily injury and property damage to the satisfaction of the Commissioner of the Department or forfeit the penal sum of this bond to the Tennessee Department of Environment and Conservation.

The Principal hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its

(their) obligation on this bond except as determined by the Tennessee Department of Environment and Conservation.

The liability of the Principal shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond.

The Principal has this day irrevocably assigned the deposit to the Tennessee Department of Environment and Conservation and has submitted to the Tennessee Department of Environment and Conservation the original of Certificate of Deposit # *[insert: serial number of the certificate]* or an original safekeeping receipt of the deposit. Such Certificate of Deposit or original safekeeping receipt registers the ownership of the deposit as *[insert either: name of tank owner or operator and the Tennessee Department of Environment and Conservation or Tennessee Department of Environment and Conservation]*.

The Department is hereby authorized to unilaterally redeem the certificate of deposit for cash if the Principal fails to perform any condition of this bond. The proceeds of any such redemption are forfeited to the Department.

The Principal hereby agrees to submit to the financial institution receiving the deposit a copy of the original of this **Statement of Personal Bond Supported by Certificate of Deposit** to be held by such institution as a condition of the deposit.

IN WITNESS WHEREOF, the Principal has executed this PERFORMANCE BOND and has affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this personal bond on behalf of the Principal and that the wording of this personal bond is identical to the wording provided by the Department

PRINCIPAL

[Insert: signature(s), name(s) and title(s) of official(s)]

Signature: _____

Name: _____

Title: _____

[Apply Corporate seal, if any]

[Insert: date]

Date: _____

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

_____ Notary Public

My commission expires _____

G. Trust Fund and Agreement

A Trust Agreement is one of the mechanisms that may be used by a tank owner or tank operator to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(12) Trust Fund and Agreement can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism may be used in combination with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Trust Agreement (see page 65)

Upon execution and funding of a Trust Fund a duplicate original of the executed, signed, notarized Trust Agreement must be submitted to the Commissioner. Wording for the Trust Agreement shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted. The Trust Agreement must be accompanied by the following four (4) attachments:

2. Scheduled A (see page 73)

This attachment shall list the UST facilities using the Trust Fund and Agreement to demonstrate financial responsibility.

3. Schedule B (see page 74)

This attachment shall document the payments made to the Trust Fund.

4. Exhibit A (see page 75)

This attachment shall list those persons authorized by the Grantor to sign written orders, requests, and instructions by the Grantor to the Trustee.

5. Exhibit B

This attachment shall be a letter from the Trustee to the Grantor acknowledging receipt of the deposit of payments into the Trust Fund.

TRUST AGREEMENT

Trust agreement, the “Agreement” entered into as of *[insert: date]* by and between *[insert: name of the tank owner or operator]*, a *[insert: name of state]* *[insert: corporation, partnership, association, or proprietorship]*, the “Grantor,” and *[insert: name of corporate trustee]*, *[insert either: Incorporated in the State of [insert: name of state] or a national bank]*, the Trustee.”

Whereas, the Tennessee Petroleum Underground Storage Tank Board, an agency of the Government of the State of Tennessee, has established certain regulations, rule 1200-01-15-.08(12), applicable to the Grantor, requiring that an owner or operator of a petroleum underground storage tank system(s) provide assurance that funds will be available when needed for taking corrective action and compensating third-parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank system(s);

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein. The attached Schedule A lists the number of tank compartments at each facility and the name and address of the each facility where the tank compartments are located that are covered by the trust agreement;

Whereas, the Grantor acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

- (a) The term “Beneficiary” means the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation.
- (b) The term “Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or his/her designee in such matters.
- (c) The Term “Grantor” means the tank owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (d) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to a fully funded trust account (“the Trust Fund”) established pursuant to the specifications of rule 1200-01-15-.08(12) to satisfy the requirements of rule 1200-01-15-.08. The Trust Fund must be fully funded upon its effective date.

Section 3. Establishment of the Trust Fund

The Grantor and the Trustee hereby establish a trust fund for the benefit of the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation, (the “Division”). The Grantor and the Trustee intend that no third party have access to the Trust Fund except as herein provided. Payments made by the provider of financial assurance, pursuant to the instructions of the Commissioner, are transferred to the Trustee and are referred to as the Trust Fund, together with all earnings and profits thereon, less any payments or distribution made by the Trustee pursuant to the Agreement. The Trust Fund shall be held by the Trustee, IN TRUST, as herein provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount of or adequacy of financial assurance nor have any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Commissioner.

Section 4. Payment for [*insert: Taking Corrective Action and/or Third Party Liability Claims*]

The trustee shall make payments from the Trust Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of [*insert: taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases*] arising from the operation of the petroleum underground storage tank systems covered by the financial assurance mechanism identified in this Agreement.

The Trust Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [*insert: name of tank owner or operator*] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [*insert: name of tank owner or operator*] arising from, and in the course of employment by [*insert: name of tank owner or operator*];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*insert: name of tank owner or operator*];

operator] that is not the direct result of a release from a petroleum underground storage tank system;

- (e) Bodily injury or property damage for which [*insert: name of tank owner or operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Tennessee Rule 1200-01-15-.08.

The Trustee shall reimburse the Grantor, or other persons as directed by the Commissioner, from the Trust Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Trust Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trust Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Trust Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Trust Fund, the Trustee shall discharge his duties with respect to the Trust Fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations, of the Grantor or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Trust Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government;
- (c) The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Trust Fund to any common, commingled, or collective trust fund created by the Trustee in which the Trust Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Trust Fund in its own name or a nominee and to hold any securities in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show such securities are part of the Trust Fund;

- (d) To deposit any cash in the Trust Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Trust Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in any respect of the Trust Fund and all brokerage commissions incurred by the Trust Fund shall be paid from the Trust Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Trust Fund. At any point that such payments from the Trust Fund decrease the value of the Trust Fund below the amount required by rule 1200-01-15-.08(3), as applicable, the Grantor, within thirty (30) days from the date of notification by the Trustee or the Commissioner, shall make cash payments into the Trust Fund to raise the value of the Trust Fund to the amount required.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to the court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on

which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to The Trustee

All orders, request, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, request, and instructions. All orders, requests, and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commissioner hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Commissioner, except as provided for herein.

Section 14. Amendment of Agreement

This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Commissioner or by the Trustee and the Commissioner, if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee with the approval of the Commissioner or by the Trustee acting at the Direction of the Commissioner if the regulatory requirement for the Trust Fund no longer exists or the Trust Fund has been replaced by an approved alternative financial instrument. The Grantor and the Trustee hereby agree that if at any point of the duration of this agreement, the Grantor fails to comply with the statutory and regulatory requirements of T.C.A. §§ 68-215-101 et seq. and rule chapter 1200-01-15 to pay for corrective action costs and/or to pay third party claims for damages caused by accidental releases arising from the operation of petroleum underground storage tank systems, the Commissioner may order the funds of the Trust Fund to be forfeited to the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation for payment of corrective action costs and/or payment of third party claims for damages caused by accidental releases arising from the operation of petroleum underground storage tank systems and that the Trustee and the Grantor will comply promptly with such Order of Forfeiture.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act in the administration of this Trust or in carrying out any directions by the Grantor or the Commissioner as long as such actions by the Trustee are in concert with the terms of this Agreement and such acts are done with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of Tennessee, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Rule 1200-01-15-.08(12) and the guidelines authorized thereby on the date shown below.

Signature of Grantor:

Name of Grantor:

Title:

Attest:

Signature of Trustee:

Name of Trustee:

Title:

[Affix Seal, if any]

Signature of Witness:

Name of Witness:

Title:

[Affix Seal, if any]

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

Notary Public

My commission expires _____

Trust Agreement

Schedule A

Name of Grantor: _____

Address: _____

[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
|------------------------|---------------------|------------------|-------------------------------|--|--|---|

(1)

(2)

(3)

Annual Aggregate Amount for Corrective Action Costs: _____

Annual Aggregate Amount for Third Party Claims: _____

Trust Agreement

Schedule B

The trust fund initially consists of the sum of \$**[insert: dollar amount]** in cash and the additional sum of \$**[insert: dollar amount]** securities described below:

[list the securities and include the market value of the securities on the date of the deposit to escrow]

Trust Agreement

Exhibit A

Chief Executive Officer or Principal of the Grantor:

Name _____

Address _____

List those persons authorized by the Grantor to sign written orders, requests, and instructions by the Grantor to the Trustee, including their position or job title:

Name _____

Position _____

Name _____

Position _____

Name _____

Position _____

The Commissioner's designee:

H. Local Government Bond Rating Test

Local Government Bond Rating Test is one of the mechanisms that may be used by a tank owner or tank operator, which is also a local government, to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(13) Local Government Bond Rating Test can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf>.

This mechanism **cannot be used in combination** with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC **annually**. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Letter from the Chief Financial Officer of the Local Government

A Letter from the Chief Financial Officer of the local government that is the petroleum underground storage tank owner or operator using the Local Government Bond Rating Test as its financial assurance mechanism shall be submitted annually. To satisfy the requirements of the Underground Storage Tank Regulations governing financial responsibility, the wording of the letter as submitted shall be exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced by the relevant information and the brackets deleted.

- (a) Letter from the Chief Financial Officer (of a General Purpose Local Government Tank Owner or Operator)** (see page 76)
- (b) Letter from the Chief Financial Officer (of a Non-General Purpose Local Government Tank Owner or Operator)** (see page 82)

2. Published Bond Rating

An original or a certified copy of the bond rating published by Moody's or Standard and Poor's within the last twelve (12) months shall be submitted to the Department initially with the Letter from the Chief Financial Officer. For each subsequent year an original or a certified copy of the bond rating published by Moody's or Standard and Poor's within the last twelve (12) months shall be

submitted within ninety (90) days of the end of the fiscal year of the local government owner or operator.

NOTE: Standard and Poor's ratings acceptable to the Commissioner and by Regulation are limited to ratings of AAA, AA, A, or BBB, ratings of BBB- (BBB minus) and less are not acceptable to the Commissioner. Moody's ratings acceptable to the Commissioner and by Regulation are limited to ratings of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner.

Letter From the Chief Financial Officer

(of a General Purpose Local Government Owner or Operator)

I am the chief financial officer of [*insert: name and address of local government tank owner **or** tank operator **or** guarantor*]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in the amount of at least \$[*insert: dollar amount*] per occurrence and at least \$[*insert: dollar amount*] annual aggregate. This letter is submitted to satisfy the requirements of rule 1200-01-15-.08(3) and (13) of the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks.

Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this bond rating test: [*insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.*]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable |
|------------------------|------------------|------------------|-------------------------------|--|
| (1) | | | | |
| (2) | | | | |
| (3) | | | | |

The total amount of financial assurance for underground storage tank systems in the State of Tennessee provided through the use of the financial test is \$[*insert: dollar amount*].

[*insert: Name of local government owner or operator **or** guarantor*] [*insert one: does **or** does not*] use the Local Government Bond Rating Test in other environmental programs in the State of Tennessee. The following is a list of all environmental programs for which the local government uses the Local Government Bond Rating Test to comply with the financial responsibility requirement of any of the following programs:

1. Financial assurance for corrective action for solid waste management units;
2. Closure and/or post closure of hazardous waste treatment, storage, and/or disposal facilities;

3. Closure and/or remediation and operation and maintenance of CERCLA sites;
4. Storage, disposal, post closure care, and corrective action at municipal, industrial, or privately owned solid waste management facilities;
5. Reclamation of facilities licensed to receive, possess, store, and use radioactive material;
6. Private sewerage treatment and disposal systems;
7. Used oil management;
8. Recycling and reuse of hazardous waste;
9. Third party legal pollution liability coverage for hazardous waste facilities;
10. Plugging and abandonment of hazardous waste;
11. Oil and gas exploration
12. Other environmental programs not listed above

Identified below are any and all facilities for which the Local Government Bond Rating Test is used by the local government as described above:

Name of Facility_____

Facility Address_____

Identification Number of the Facility, Assigned by the State of Tennessee _____

| | Environmental Program | Amount of Financial Responsibility |
|-----|-----------------------|---------------------------------------|
| (1) | | |
| (2) | | |
| (3) | | |

The total amount of financial assurance for other environmental programs (in addition to petroleum underground storage tanks) in the State of Tennessee is \$*[insert: the dollar amount]*.

The total amount of financial assurance for both petroleum underground storage tanks and other environmental programs, for which the local government owner or operator uses the Local Government Bond Rating Test in the State of Tennessee is \$*[insert: the dollar amount]*.

[insert in table format: the issue date, maturity date, outstanding amount, bond rating, and bond rating agency [insert: Moody's or Standard and Poor's] of all outstanding bond issues that are being used by the local government owner or operator to demonstrate financial responsibility:]

| | Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Bond Rating Agency |
|-----|---------------|------------------|-----------------------|----------------|-----------------------|
| (1) | | | | | |
| (2) | | | | | |
| (3) | | | | | |

The total outstanding obligation of \$*[insert: amount]*, excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000.00). All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard and Poor's are rated as investment grade (**NOTE:** Standard and Poor's ratings acceptable to the Commissioner and by Regulation are limited to ratings of AAA, AA, A, or BBB, ratings of BBB- (BBB minus) and less are not acceptable to the Commissioner. Moody's ratings acceptable to the Commissioner and by Regulation are limited to ratings of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(13) and the guidelines required thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness
my hand and official seal, this _____ day of
_____ AD, 20_____.

_____ Notary Public

Letter From The Chief Financial Officer

(Of A Non-General Purpose Local Government Owner and/or Operator)

I am the chief financial officer of [*insert: name and address of local government tank owner or tank operator or guarantor*]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks systems in the amount of at least \$[*insert: dollar amount*] per occurrence and at least \$[*insert: dollar amount*] annual aggregate. This letter is submitted to satisfy the requirements of rule 1200-01-15-.08(2) and (14) of the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks.

This local government is not organized to provide general government services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Petroleum underground storage tank systems at the following facilities in Tennessee are assured by this bond rating test: [*insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.*]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable |
|------------------------|------------------|------------------|-------------------------------|--|
| (1) | | | | |
| (2) | | | | |
| (3) | | | | |

The total amount of financial assurance for underground storage tank systems in the State of Tennessee provided through the use of the financial test is \$[*insert: dollar amount*].

[*insert: Name of local government owner or operator or guarantor*] [*insert one: does or does not*] use the Local Government Bond Rating Test in other environmental programs in the State of Tennessee. The following is a list of all environmental programs for which the local government uses the Local Government Bond Rating Test to comply with the financial responsibility requirement of any of the following programs:

1. Financial assurance for corrective action for solid waste management units;

2. Closure and/or post closure of hazardous waste treatment, storage, and/or disposal facilities;
3. Closure and/or remediation and operation and maintenance of CERCLA sites;
4. Storage, disposal, post closure care, and corrective action at municipal, industrial, or privately owned solid waste management facilities;
5. Reclamation of facilities licensed to receive, possess, store, and use radioactive material;
6. Private sewerage treatment and disposal systems;
7. Used oil management;
8. Recycling and reuse of hazardous waste;
9. Third party legal pollution liability coverage for hazardous waste facilities;
10. Plugging and abandonment of hazardous waste;
11. Oil and gas exploration
12. Other environmental programs not listed above

Identified below are any and all facilities for which the Local Government Bond Rating Test is used by the local government as described above:

Name of Facility_____

Facility Address_____

Identification Number of the Facility, Assigned by the State of Tennessee_____

| | Environmental Program | Amount of Financial Responsibility |
|-----|-----------------------|---------------------------------------|
| (1) | | |
| (2) | | |
| (3) | | |

The total amount of financial assurance for other environmental programs (in addition to petroleum underground storage tanks) in the State of Tennessee is \$[*insert: the dollar amount*].

The total amount of financial assurance for both petroleum underground storage tanks and other environmental programs, for which the local government owner or operator uses the Local Government Bond Rating Test in the State of Tennessee is \$[*insert: the dollar amount*].

[*insert in table format: the issue date, maturity date, outstanding amount, bond rating, and bond rating agency [insert: Moody's or Standard and Poor's] of all outstanding bond issues that are being used by the local government owner or operator to demonstrate financial responsibility:*]

| | Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Bond Rating Agency |
|-----|---------------|------------------|-----------------------|----------------|-----------------------|
| (1) | | | | | |
| (2) | | | | | |
| (3) | | | | | |

The total outstanding obligation of \$[*insert: amount*], excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000.00). All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard and Poor's are rated as investment grade (**NOTE:** Standard and Poor's ratings acceptable to the Commissioner and by Regulation are limited to ratings of AAA, AA, A, or BBB, ratings of BBB- (BBB minus) and less are not acceptable to the Commissioner. Moody's ratings acceptable to the Commissioner and by Regulation are limited to ratings of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner based on the most recent ratings published within the last twelve (12) months. The revenue bonds listed are not backed by third-party credit enhancements or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(13) and the guidelines required thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness
my hand and official seal, this _____ day of
_____ AD, 20_____.

_____ Notary Public

I. Local Government Financial Test

Local Government Financial Test is one of the mechanisms that may be used by a tank owner or tank operator, which is also a local government, to demonstrate financial responsibility as required by both state and federal regulations. Tennessee rule 1200-01-15-.08(14) Local Government Financial Test can be accessed at: <http://tennessee.gov/sos/rules/1200/1200-01/1200-01-15.pdf> .

This mechanism **cannot be used in combination** with another mechanism. This mechanism requires that the documents listed below be submitted to TDEC **annually**. The submittal shall be sent to the following address:

**State of Tennessee
Department of Environment and Conservation
Division of Financial Responsibility
L and C Building Annex, 8th Floor
401 Church Street
Nashville, Tennessee 37243**

1. Letter from the Chief Financial Officer of the Local Government

A Letter from the Chief Financial Officer of the local government that is the petroleum underground storage tank owner or operator using the Local Government Financial Test as its financial assurance mechanism shall be submitted annually. To satisfy the requirements of the Underground Storage Tank Regulations governing financial responsibility, the wording of the letter as submitted shall be exactly as set forth in these guidelines, except that the instructions in the brackets are to be replaced by the relevant information and the brackets deleted. (see page 87)

2. Worksheet for Municipal Financial Test

- (a) Part 1: Basic Information (see page 90)**
- (b) Part: II: Application of Test (see page 92)**

LETTER FROM THE CHIEF FINANCIAL OFFICER

(of a Local Government Owner or Operator)

I am the chief financial officer of *[insert: name and address of the local government tank owner **or** operator]*. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in the amount of at least \$*[insert: dollar amount]* per occurrence and \$*[insert: dollar amount]*. annual aggregate.

Petroleum underground storage tank systems at the following facilities are assured by this financial test: *[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]*

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable |
|------------------------|------------------|------------------|-------------------------------|--|
| (1) | | | | |
| (2) | | | | |
| (3) | | | | |

The total amount of financial assurance for petroleum underground storage tank systems in the State of Tennessee provided through the use of the financial test is \$*[insert: dollar amount]*.

[insert: Name of local government owner or operator] *[insert one: does **or** does not]* use the Local Government Bond Rating Test in other environmental programs in the State of Tennessee. The following is a list of all environmental programs for which the local government uses the Local Government Financial Test to comply with the financial responsibility requirement of any of the following programs:

1. Financial assurance for corrective action for solid waste management units;
2. Closure and/or post closure of hazardous waste treatment, storage, and/or disposal facilities;
3. Closure and/or remediation and operation and maintenance of CERCLA sites;

4. Storage, disposal, post closure care, and corrective action at municipal, industrial, or privately owned solid waste management facilities;
5. Reclamation of facilities licensed to receive, possess, store, and use radioactive material;
6. Private sewerage treatment and disposal systems;
7. Used oil management;
8. Recycling and reuse of hazardous waste;
9. Third party legal pollution liability coverage for hazardous waste facilities;
10. Plugging and abandonment of hazardous waste;
11. Oil and gas exploration
12. Other environmental programs not listed above

Identified below are any and all facilities for which the Local Government Bond Rating Test is used by the local government as described above:

Name of Facility_____

Facility Address_____

Identification Number of the Facility, Assigned by the State of Tennessee_____

| Environmental Program | Amount of Financial Responsibility |
|-----------------------|---------------------------------------|
| (1) | |
| (2) | |
| (3) | |

The total amount of financial assurance for other environmental programs (in addition to petroleum underground storage tanks) in the State of Tennessee is \$*[insert: the dollar amount]*.

The total amount of financial assurance for both petroleum underground storage tanks and other environmental programs, for which the local government owner or operator uses the Local Government Financial Test in the State of Tennessee is \$*[insert: the dollar amount]*.

This tank owner or operator has not received an adverse opinion, or disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa2, ratings of Baa3 and less are not acceptable to the Commissioner, or a Standard and Poor's rating of AAA, AA, A, or BBB, ratings of BBB-(BBB minus) and less are not acceptable to the Commissioner.

Worksheet for Municipal Financial Test

Part 1: Basic Information

1. Total Revenues

- a.** Revenues (dollars) \$ _____
Value of revenues excludes liquidation of investments and issuances of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other government funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
- b.** Subtract interfund transfers(dollars) \$ _____
- c.** Total Revenues (dollars) \$ _____

2. Total Expenditures

- a.** Expenditures (dollars) \$ _____
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principle, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
- b.** Subtract interfund transfer (dollars) \$ _____
- c.** Total Expenditure (dollars) \$ _____

3. Local Revenues

| | | |
|-----------|--|-------|
| a. | Total revenues (from 1c) (dollars) | \$ |
| | | _____ |
| b. | Subtract total intergovernmental transfers (dollars) | \$ |
| | | _____ |
| c. | Local Revenues (dollars) | \$ |
| | | _____ |

4. Debt Service

| | | |
|-----------|---------------------------------------|-------|
| a. | Interest and fiscal charges (dollars) | \$ |
| | | _____ |
| b. | Add debt retirement (dollars) | \$ |
| | | _____ |
| c. | Total Debt Service (dollars) | \$ |
| | | _____ |

| | | |
|-----------|---|-------|
| 5. | Total Funds (dollars) | |
| | (Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds) | \$ |
| | | _____ |

| | | |
|-----------|----------------------|-------|
| 6. | Population (persons) | \$ |
| | | _____ |

Part: II: Application of Test

7. Total revenues to Population

- a. Total Revenues (from 1c) _____
- b. Population (from 6) _____
- c. Divide 7a by 7b _____
- d. Subtract 417 _____
- e. Divide by 5,212 _____
- f. Multiply by 4.095 _____

8. Total Expenses to Population

- a. Total Expenses (from 2c) _____
- b. Population (from 6) _____
- c. Divide 8a by 8b _____
- d. Subtract 524 _____
- e. Divide by 5,401 _____
- f. Multiply by 4.095 _____

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c) _____
- b. Total Revenues (from 1c) _____
- c. Divide 9a by 9b _____
- d. Subtract .695 _____
- e. Divide by .205 _____
- f. Multiply by 2.840 _____

10. Debt Service to Population

- a. Debt Service (from 4d) _____
- b. Population (from 6) _____
- c. Divide 10a by 10b _____
- d. Subtract 51 _____
- e. Divide by 1,038 _____

- f. Multiply by -1.866 _____
- 11. Debt Service to Total Revenues**
- a. Debt Service (from 4d) _____
- b. Total Revenues (from 1c) _____
- c. Divide 11a by 11b _____
- d. Subtract .068 _____
- e. Divide by .259 _____
- f. Multiply by -3.533 _____
- 12. Total Revenues to Total Expenses**
- a. Total Revenues (from 1c) _____
- b. Total Expenses (from 2c) _____
- c. Divide 12a by 12b _____
- d. Subtract .910 _____
- e. Divide by .899 _____
- f. Multiply by 3.458 _____
- 13. Funds Balance To Total Revenues**
- a. Total Funds (from 5) _____
- b. Total Revenues (from 1c) _____
- c. Divide 13a by 13b _____
- d. Subtract .891 _____
- e. Divide by 9.156 _____
- f. Multiply by 3.270 _____
- 14. Funds Balance to Total Expenses**
- a. Total Funds (from 5) _____
- b. Total Expenses (from 2c) _____
- c. Divide 14a by 14b _____
- d. Subtract .866 _____
- e. Divide by 6.409 _____

- f. Multiply by 3.270 _____
- 15.** Total Funds to Population
- a. Total Funds (from 5) _____
- b. Population (from 6) _____
- c. Divide 15a by 15b _____
- d. Subtract 270 _____
- e. Divide by 4,548 _____
- f. Multiply by 1.866 _____
- 16.** Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$ _____

I hereby certify that the wording of this letter is in compliance with the requirements set forth in Tennessee Petroleum Underground Storage Tank rule 1200-01-15-.08(14) and the guidelines required thereby on the date shown below.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

[Notary]

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed. Witness

my hand and official seal, this _____ day of

_____AD, 20_____.

_____ Notary Public

J. Standby Trust Fund and Agreement

- I. A Standby Trust Fund and Agreement is required when a tank owner or tank operator uses one of the following mechanisms to meet the requirements of rule 1200-01-15-.08(3):
 - a. Liability Insurance;
 - b. Surety Bond or Performance Bond; or
 - c. Irrevocable Standby Letter of Credit.
- II. A Standby Trust Fund must be established by a tank owner or tank operator using one of the following mechanisms if the requirements of the financial test can no longer be met and the owner or operator fails to provide an alternative financial assurance mechanism that meets the requirements of rule 1200-01-15-.08:
 - a. Financial Test of Self-Assurance;
 - b. Corporate Parent Financial Test Guarantee;
 - c. Local Government Bond Rating Test; or
 - d. Local Government Financial Test.

1. Standby Trust Agreement (see page 98)

Upon execution and funding of a Standby Trust Fund a duplicate original of the executed, signed, notarized Trust Agreement must be submitted to the Commissioner. Wording for the Trust Agreement shall be as shown in these guidelines, except that the instructions in the brackets are to be replaced with the relevant information and the brackets deleted.

The following four (4) attachments must be submitted as specified below:

2. Scheduled A (see page 106)

- A. If the tank owner or operator is using one of the financial mechanisms in Part I above to demonstrate financial responsibility, a list the UST facilities covered by that mechanism shall be submitted at the time the Standby Trust Agreement is submitted to the Commissioner.

- B. If the tank owner or operator using one of the financial assurance mechanisms in Part II above is required to establish a Standby Trust Fund because the requirements of the financial test can no longer be met and the owner or operator has failed to provide an alternative financial assurance mechanism that meets the requirements of rule 1200-01-15-.08, Schedule A must be submitted at the time the Standby Trust Fund is established

3. Schedule B (see page 107)

This attachment shall document the payments made to the Standby Trust Fund and shall be submitted at the time payment is first made into the Standby Trust Fund.

4. Exhibit A (see page 108)

This attachment shall list those persons authorized by the Grantor to sign written orders, requests, and instructions by the Grantor to the Trustee. Exhibit A shall be submitted with the Standby Trust Fund Agreement.

5. Exhibit B

This attachment shall be a letter from the Trustee to the Grantor acknowledging receipt of the deposit of payments into the Trust Fund. Exhibit B shall be submitted at the time payment is first made into the Standby Trust Fund.

STANDBY TRUST AGREEMENT

Standby Trust agreement, the “Agreement” entered into as of **[insert: date]** by and between **[insert: name of the tank owner or operator]**, a **[insert: name of state]** **[insert: corporation, partnership, association, or proprietorship]**, the “Grantor,” and **[insert: name of corporate trustee]**, **[insert: Incorporated in the State of [insert: name of state] or a national bank]**, the Trustee.

Whereas, the Tennessee Petroleum Underground Storage Tank Board, an agency of the Government of the State of Tennessee, has established certain regulations, rule 1200-01-15-.08, applicable to the Grantor, requiring that an owner or operator of a petroleum underground storage tank system(s) shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of petroleum underground storage tank system(s). The attached Schedule A lists the number of tank compartments at each facility and the name(s) and address(es) of the facility(ies) where the tank compartments are located that are covered by the standby trust agreement;

Whereas the Grantor has elected to establish **[insert: a Liability Insurance Policy, a Surety Bond or Performance Bond, or an Irrevocable Letter of Credit]** to provide all or part of such financial assurance for the petroleum underground storage tank systems identified herein and is required to establish a standby trust fund able to accept payments from the instrument;

Whereas, the Grantor acting through its duly authorized officers, has selected the Trustee to be the Trustee under this agreement, and the Trustee is willing to act as Trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

- (a) The term “Beneficiary” means the Tennessee Department of Environment and Conservation.
- (b) The term “Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or his/her designee in such matters.
- (c) The Term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (d) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the **[insert: Liability Insurance Policy, Surety Bond or Performance Bond, or Irrevocable Letter of Credit]** from which the standby trust fund is established to receive payments.

Section 3. Establishment of the Fund

The Grantor and the Trustee hereby establish a trust fund, “The Trust Fund”, for the benefit of the Commissioner of the Tennessee Department of Environment and Conservation, (the “Commissioner”). The Grantor and the Trustee intend that no third party have access to the Trust Fund except as herein provided. (The Trust Fund is established initially as a standby trust to receive payments and shall not consist of any property.) Payments made by the provider of financial assurance, pursuant to the instructions of the Commissioner, are transferred to the Trustee and are referred to as the Trust Fund, together with all earnings and profits thereon, less any payments or distribution made by the Trustee pursuant to the Agreement. The Trust Fund shall be held by the Trustee, IN TRUST, as herein provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount of or adequacy of financial assurance nor have any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Commissioner.

Section 4. Payment for [insert: *Corrective Action and/or Third Party Liability Claims*]

The trustee shall make payments from the Trust Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of **[insert: *taking corrective action and/or compensating third parties for bodily injury and property damage*]** caused by accidental releases arising from the operation of the underground storage tank system(s) covered by the financial assurance mechanism identified in this Agreement.

The Trust Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of **[insert: *name of tank owner or operator*]** under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of **[insert: *name of owner or operator*]** arising from, and in the course of employment by **[insert: *name of tank owner or operator*]**;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by **[insert: name of tank owner or operator]** that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which **[insert: name of tank owner or operator]** is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Tennessee Rule Chapter 1200-01-15-.08.

The Trustee shall reimburse the Grantor, or other persons as directed by the Commissioner, from the Trust Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Trust Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trust Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Trust Fund, the Trustee shall discharge his duties with respect to the Trust Fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the underground storage tank systems, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Trust Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government;

- (c) The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Trust Fund to any common, commingled, or collective trust fund created by the Trustee in which the Trust Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. including one, which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Trust Fund in its own name or a nominee and to hold any securities in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show such securities are part of the Trust Fund;

- (d) To deposit any cash in the Trust Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Trust Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in any respect of the Trust Fund and all brokerage commissions incurred by the Trust Fund shall be paid from the Trust Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Trust Fund. At any point that such payments from the Trust Fund decreases the value of the Trust Fund below the amount required by rule 1200-01-15-.08(3)(a) or (b), as applicable, the Grantor, within thirty (30) days from the date of notification by the Trustee or the Commissioner, shall make cash payments into the Trust Fund to raise the value of the Trust Fund to the amount required.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to the court of competent jurisdiction for the appointment or a

successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Trust Fund in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to The Trustee

All orders, request, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, request, and instructions. All orders, requests, and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commissioner hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Commissioner, except as provided for herein.

Section 14. Amendment of Agreement

This agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Commissioner or by the Trustee and the Commissioner, if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee with the approval of the Commissioner or by the Trustee acting at the Direction of the Commissioner if the regulatory requirement for the Trust Fund no longer exists or the Trust Fund has been replaced by an approved alternative financial instrument. The Grantor and the Trustee hereby agree that if at any point of the duration of this agreement, the Grantor fails to comply with the statutory and regulatory requirements of T.C.A. §§ 68-215-101 et seq. and rule chapter 1200-01-15 to pay for corrective action costs and/or to pay third party claims for damages caused by accidental releases arising from the operation of petroleum underground storage tank systems, the Commissioner may order the funds of the Trust Fund to be forfeited to the Division of Underground Storage Tanks of the Tennessee Department of Environment and Conservation for payment of corrective action costs and/or payment of third party claims for damages caused by accidental releases arising from the operation of petroleum underground storage tank systems and that the Trustee and the Grantor will comply promptly with such Order of Forfeiture.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act in the administration of this Trust or in carrying out any directions by the Grantor or the Commissioner as long as such actions by the Trustee are in concert with the terms of this Agreement and such acts are done with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of Tennessee, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Rule 1200-01-15-.08(15) and the guidelines authorized thereby on the date shown below.

Signature of Grantor:

Name of Grantor:

Title:

Attest:

Signature of Trustee:

Name of Trustee:

Title:

[Affix Seal, if any]

Signature of Witness:

Name of Witness:

Title:

[Affix Seal, if any]

Notary

STATE OF _____

COUNTY OF _____

Before me personally appeared

who executed said instrument for the purposes therein expressed.

Witness my hand and official seal, this _____

day of _____ AD, 20_____.

_____ Notary Public

My commission expires_____

Trust Agreement

Schedule A

Name of Grantor: _____

Address: _____

[insert and list for each facility: the number of tanks and/or tank compartments, the name, the address, and the identification number assigned by the Tennessee Division of Underground Storage Tanks for each facility.]

| Name of Facility | Facility Address | Facility ID # | Number Assigned to Tank | Letter Assigned to Compartment, if applicable | Per Occurrence Amount for Corrective Action | Per Occurrence Amount for Third Party Claims |
|------------------------|---------------------|------------------|-------------------------------|--|--|---|
|------------------------|---------------------|------------------|-------------------------------|--|--|---|

(1)

(2)

(3)

Annual Aggregate Amount for Corrective Action Costs: _____

Annual Aggregate Amount for Third Party Claims: _____

Trust Agreement

Schedule B

The trust fund initially consists of the sum of \$**[insert: dollar amount]** in cash and the additional sum of \$**[insert: dollar amount]** securities described below:

[list the securities and include the market value of the securities on the date of the deposit to escrow]

Trust Agreement

Exhibit A

Chief Executive Officer or Principal of the Grantor:

Name _____

Address _____

List those persons authorized by the Grantor to sign written orders, requests, and instructions by the Grantor to the Trustee, including their position or job title:

Name _____

Position _____

Name _____

Position _____

Name _____

Position _____

The Commissioner's designee: